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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

In the Matter of )  
 )  
Policies and Rules Regarding ) MM Docket Nos.  
Minority and Female Ownership ) 94-149/ and 91-140  
of Mass Media Facilities )

TO: The Commission

**COMMENTS OF MULTICULTURAL RADIO BROADCASTING, INC.**

Multicultural Radio Broadcasting, Inc. ("MRB"), by its counsel, submits the following comments in response to the Commission's Notice of Proposed Rulemaking, released January 12, 1995 (hereinafter "NPRM"), concerning minority ownership of radio stations:

1. In the Notice, the Commission proposed to "permit a minority-controlled entity to own up to three AM stations of any type and up to three Class A FM stations in markets with at least 15 stations, subject to a combined audience share limitation of 30 percent." Id. at 21. MRB endorses this proposal, but urges the Commission to modify these limits to allow minority-controlled entities to own up to six radio stations of either service (AM or FM) in markets with at least 15 stations, subject to the 30% audience limit. Thus, under

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MRB's proposal minority-controlled entities could own as many as six AM stations or six FM stations or some combination of the two not to exceed six stations.

2. MRB's proposal should be adopted because it is consistent with (1) the purposes of the Commission's minority ownership policies, (2) the purposes of the Commission's duopoly policies, and (3) the Commission's repeated statements that AM and FM services should be treated as one service. Each of these issues will be addressed in turn.

3. The Supreme Court has stated that the Commission's "minority ownership policies ... serve the important governmental objective of broadcast diversity." Metro Broadcasting v. FCC, 497 U.S. 547, 566 (1990) (upholding policy against constitutional challenge). Similarly, the Commission itself recently stated that it is changing its minority ownership rules to "further the core Commission goal of maximizing the diversity of points of view available to the public over the mass media," NPRM at 2. As of June 30, 1994, minorities represented only 23 percent of the national workforce but controlled only 2.9 percent of the commercial radio and television stations on the air. Id. at 5.

4. MRB's proposal would support the Commission's initiative to increase the number of radio stations that a minority could own. First, not all radio stations are for sale at any given time. Second, even within the subset of stations

that are for sale perhaps an FM will be too expensive for minority broadcasters but additional AM stations may not be. The Commission has recognized that minorities "may lack access to capital when attempting to finance the purchase of a mass media outlet when others similarly situated would have such access." Id. at 7. By contrast, under MRB's proposal minority broadcasters would be permitted to purchase up to six stations which is consistent with the Commission's proposed limit.

5. The Commission has recently suggested another rationale for minority ownership preferences. In its NPRM, the Commission "solicit[ed] comment on whether we should rely on an economic rationale," id., for minority preferences. This "economic rationale" is that "women and minorities face economic disadvantages when they attempt to enter the mass media industry and that it may be appropriate to attempt to rectify such disadvantages.... Accordingly, we seek comment about whether, in some cases, minorities and women may lack access to capital when attempting to finance the purchase of a mass media outlet when others similarly situated would have such access." Id. The Commission's "economic rationale" for minority preferences also supports MRB's proposal to allow minority broadcasters increased flexibility, because minority broadcasters will suffer less injury from their lack of access to capital if they can choose from among a wider variety of affordable stations. MRB's proposal would allow increased flexibility in this regard

without increasing the number of stations to be owned under the Commission's proposal.

6. The Commission's rationale for changing its minority ownership rules also supports MRB's proposal. The Commission proposes to allow minorities to own three AM and three FM stations because "minority broadcasters' initial entry in the industry is often achieved through acquisition of less costly stations, generally AM stations or Class A FM stations." NPRM at 21. If AM and FM stations are equally expensive (and equally available), the Commission's proposal will be sufficient to maximize minority ownership of "less costly stations." However, if FM stations are more expensive than AM stations (or vice versa) the Commission's proposal may effectively limit minority broadcasters to as few as three stations. For example, suppose that in market X, all AM stations are affordable and all FM stations are not. If minority broadcaster Y can only afford less costly stations, the Commission's proposal would limit Y to three AM stations. By contrast, MRB's proposal would allow Y to purchase up to six AM stations -- an outcome far more consistent with the Commission's policy of encouraging minority ownership of "less costly stations."

7. The Commission's duopoly policies also support MRB's proposal. In 1992, the Commission revised its local ownership limits to permit all broadcasters (not just minorities) to acquire up to two AM and two FM stations in markets with at

least 15 stations. See Report and Order in MM Docket No. 91-140, 7 FCC Rcd 6387, 6388 (1992). In support of this change, the Commission "concluded that increased consolidation of ownership permits broadcasters to combine administrative, sales, programming, promotion, production, and other functions as well as to share studio space and equipment." NPRM at 21. The Commission also found that its prior "rules may actually hamper competition and diversity by making it difficult for stations to compete ... [and] increase the costs of doing business at a time when cost-savings may well be critical to survival." Report and Order, 7 FCC Rcd 2755, 2774 (1992). As noted above, MRB's proposal will also lead to increased consolidation of ownership, by allowing minority broadcasters to purchase a combination of up to six stations of either service and take advantage of the efficiencies inherent in operating radio stations whether AM or FM.

8. In its 1992 duopoly order, the Commission adopted separate AM and FM ownership caps in order "to prevent one entity from putting together a powerful combination of stations in a single service that may enjoy an advantage over stations in a different service. We believe that this is particularly important with respect to the FM service, which in many markets enjoys significant competitive advantages." Id. at 2778. The Commission's reasoning, however, is inapplicable to minority broadcasters who own AM and Class A FM stations, for two reasons. First, the Commission itself emphasized that it was

adopting separate caps only to prevent broadcasters from creating "a powerful combination of stations." However, the Commission itself noted that FM stations had "significant competitive advantages," id., over AM stations, and Class A FM stations are by definition less powerful (and therefore less competitive) than other FM stations. It logically follows that no major-market broadcaster can create a "powerful combination" solely from the AM and Class A FM stations covered by the Commission's proposal.<sup>1/</sup> Second, minority broadcasters are especially unlikely to create such "powerful combinations" because (as noted above) minority broadcasters tend to be smaller and poorer than other broadcasters, and have historically had to settle for the cheapest, least desirable stations.<sup>2/</sup>

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<sup>1/</sup> We note in passing that even in smaller markets, very few FM stations are Class A stations. For example, in Fort Smith, Arkansas, Market No. 168, only 3 of 14 FM stations are Class A stations. See 47 CFR 73.211 (Class A stations may not have over 6 kW ERP); BIA Publications, 1994 Radio Yearbook 108 (listing Fort Smith stations' ERP). Thus, even small-market broadcasters cannot assemble a "powerful combination" out of AM and Class A FM stations. Moreover, the Commission would unduly restrict the number of stations a minority could own in markets such as Ft. Smith where only three stations are Class A but 11 other stations are of a higher class.

<sup>2/</sup> Indeed, the Commission's proposal perpetuates this pattern by liberalizing minority ownership rules only as to Class A FM stations (as opposed to more powerful FM stations). If the Commission wishes to enhance minority broadcasters' competitiveness, it may want to consider allowing minority-controlled entities to own Class C3, C2, C1, C, B1 and B stations. The Commission may want to clarify whether the Class A limitation is applicable to minorities which already own FM stations of a higher class.

9. MRB's proposal is also consistent with the Commission's repeated findings that "AM and FM have become joint components of a single aural medium." Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982) (citation omitted) (Revision). See also Anamosa and Iowa City, Iowa, 46 FCC 2d 520, 525 (1974) ("recognition must be given to AM and FM services as joint components of a single aural service.") (Anamosa). For example, the Commission has stated that its priorities for FM assignment are (in order) first full-time aural service, second full-time aural service, and first local service, without regard to whether existing service is AM or FM. Revision, 90 FCC 2d at 91-92. Earlier decisions also refused to accord a preference for a first FM service where AM stations were present. See FM Table of Assignments, 54 FCC 2d 1145, 1149 (1975) (refusing to allocate second FM station to city where AM station provided nighttime service); Roanoke Rapids and Goldsboro, North Carolina, 9 FCC 2d 672, 676 (1967) (same). Although the Commission's ownership rules have frequently drawn a distinction between AM and FM stations, other Commission decisions properly recognize the fact that radio is one service regardless of how the station is modulated.

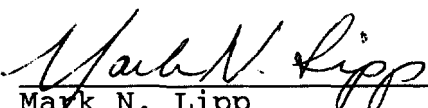
10. Minority broadcasters can offer even greater diversity of programming than they already provide by increasing opportunities to own stations. The diversity stems from the large number of ethnic and cultural heritages represented in this country. MRB, for one, offers a large variety of foreign

language programming and finds a great demand for even more programming to ethnic minority groups.

11. The Commission has consistently sought to increase minority ownership in order to increase broadcast diversity. If minorities are allowed to own multiple stations in either the AM or FM service, both minority ownership and broadcast diversity will increase. Moreover, minority broadcasters are unlikely to gain excessive market power merely by owning up to six AM stations or up to six FM stations. The Commission, therefore, should promptly adopt MRB's proposal, and should permit minority-controlled entities to own up to six radio stations in markets with over 15 radio stations, without any restriction on whether those stations are AM or FM.

Respectfully submitted,

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